

BAY COUNTY ELECTION COMMISSION  
PORTSMOUTH TWP. CLARITY  
MAY 1, 1991

THE BAY COUNTY ELECTION COMMISSION MET ON WEDNESDAY, MAY 1, 1991, IN THE COMMISSIONER'S GROUND FLOOR CONFERENCE ROOM OF THE BAY COUNTY BUILDING FOR THE PURPOSE OF DETERMINING CLARITY OF FOUR (4) RECALL PETITIONS FILED IN REGARD TO SOME OF THE PORTSMOUTH TOWNSHIP BOARD POSITIONS. THE MEETING WAS CALLED TO ORDER BY THE CHAIRMAN OF THE COMMISSION, PAUL DONER, AT 10:10 A.M. THE FOLLOWING MEMBERS AND GUESTS WERE IN ATTENDANCE.

ROLL CALL:        PAUL N. DONER, PROBATE JUDGE  
                  GEORGE MULLISON, PROSECUTOR  
                  BARBARA ALBERTSON, CO. CLERK  
                  CYNTHIA A. LUCZAK, SECRETARY  
                  DONALD KZEWINSKI, PETITIONER  
                  KARLA ROSEN, ATTORNEY FOR TWP.  
                  ROBERT PAWLAK, TWP. SUPERVISOR  
                  JUDITH BUKOWSKI, TWP. CLERK  
                  JAMES BANASZAK, TWP. TRUSTEE  
                  CHARLES PAWLAK, TWP. TRUSTEE

PORTSMOUTH OFFICIALS, VIRGIL GATZA AND HENRY BRANDT DID NOT APPEAR AT THIS CLARITY HEARING.

CHAIRMAN DONER NOTED, THE INFORMATION PRESENTED AT THE CLARITY HEARING OF APRIL 23, 1991, WOULD BE CONSIDERED PART OF THE CLARITY HEARING HELD THIS DATE.

AT THIS TIME, CHAIRMAN DONER ARBITRARILY NUMBERED THE PETITIONS ONE THROUGH FOUR IN ORDER TO ELIMINATE CONFUSION OF THE PETITIONS DURING DISCUSSION.

PURSUANT TO THE OPEN MEETINGS ACT, CHAIRMAN DONER ASKED IF TOWNSHIP OFFICIALS OR GUESTS WISHED TO DIRECT ANY QUESTIONS OR COMMENTS TO THE BOARD AT THIS TIME.

SUPERVISOR, ROBERT PAWLAK, INFORMED THE COMMISSION THE PETITION ACTION TAKEN BY THE TOWNSHIP AND ENDORSEMENT OF THE SANITARY SEWER PROJECT, WAS BASED ON THE ADVICE OF MANY EXPERTS IN THE FIELD. THAT AN ADVISORY VOTE TAKEN OF THE RESIDENTS, WOULD NOT BE BASED ON THE FACTS OF THE EXPERTS BY RATHER PERSONAL EMOTIONS. MR. PAWLAK FURTHER QUESTIONED THE CREDIBILITY OF MR. KZEWINSKI WHO IN THE PAST HAD ENDORSED THE PROJECT FOR PERSONAL REASONS AND NOT THE BEST INTEREST OF THE PORTSMOUTH RESIDENTS. PLANNING COMMITTEE OUTLINES FOR GROWTH AND DEVELOPMENT ALSO CONTAINED THE SIGNATURE OF MR. KZEWINSKI ENDORSING SAID PROJECTS. MR. PAWLAK INDICATED THE NEED FOR SEWERS HAD EXISTED IN THE PAST AND HAD NOT CHANGED AT THIS TIME. CITED WERE CONTRADICTORY ARTICLES

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PUBLISHED IN THE BAY CITY TIMES. HE FELT THE RECALL EFFORTS WERE NOT BASED ON FACTS AND POSED A FORM OF PERSONAL HARASSMENT TO THE INDIVIDUALS. MR. PAWLAK WONDERED IF THE RECALL EFFORTS WERE SOME TYPE OF POLITICAL ISSUE.

LEGAL COUNSEL, KARLA ROSEN, EXPLAINED THE SUBMISSION OF FOUR (4) PETITIONS WAS A "SHOTGUN" APPROACH TO A RECALL POSITION UNAUTHORIZED BY MICHIGAN LAW. MS. ROSEN CITED MCLA 168.952 WHICH REFERENCED "A PETITION" IN VERBIAGE. SHE REQUESTED THE COMMISSION NOT CONSIDER THE PETITIONS AS A GROUP AS THE TOTAL NUMBER SUBMITTED CAUSED A LACK OF CLARITY AS WELL. ALSO, THAT THE PETITIONER SHOULD SUBMIT ONE PARTICULAR PETITION FOR THE TOWNSHIP TO FOCUS THEIR REBUTTAL.

MR. KZEWINSKI RESPONDED THAT THE SUBSTANCE OF ALL FOUR PETITIONS WAS THE SAME, AND THE WORDING WAS THE ONLY DIFFERENCE. MR. KZEWINSKI HAD HOPED TO SAVE THE COMMISSION'S TIME FOR CONSIDERATION AND APPROVAL OF ONE OF THE DIFFERENCES IN CLARITY LANGUAGE AS SUBMITTED.

JUDGE DONER RESPONDED THERE WAS NO PROBLEM WITH CONSIDERATION OF THE FOUR (4) PETITIONS AT ONE CLARITY HEARING. WITH THE PETITIONS FORMERLY NUMBERED, HE INDICATED EACH ONE WOULD RECEIVE A SEPERATE VOTE.

PROSECUTOR MULLISON CONCURRED WITH CHMN. DONER AS THE INFORMATION WAS IN REGARD TO THE SAME SUBJECT MATTER. ALSO, THAT MEETINGS OF THE COMMISSION TO CONSIDER THE PETITIONS INDIVIDUALLY MAY BE A FORM OF HARASSMENT ITSELF.

BARBARA ALBERTSON REPORTED AS TO A CONVERSATION SHE HAD WITH THE SECRETARY OF STATE. THE SECRETARY OF STATE CONFIRMED THE LAW REGARDING THE NUMBER OF PETITIONS TO BE SUBMITTED WAS VAGUE, BUT THE CLERK SHOULD ACCEPT ALL FOUR PETITIONS AND HAVE THE COMMITTEE CONSIDER THEM INDIVIDUALLY.

ATTORNEY KARLA ROSEN ADDRESSED THE CLARITY OF THE PETITIONS SUBMITTED. PETITIONS NUMBERED 1, 2 & 4 PRESENTED SOME UNCLEAR LANGUAGE AND IMPLIED INTENT IN REGARD THE ADVISORY VOTE, ACTS OF THE OFFICERS, AND THE CONTROL OF THE ADVISORY VOTE. PETITION NUMBERED 3 FAILED TO SPECIFY WHAT THE PETITION REQUESTING THE VOTE, WAS ABOUT, IN HER OPINION.

MR. KRZEWINSKI NOTIFIED THE COMMISSION, HE WAS AWARE OF THE FACT THAT THE ADVISORY VOTE REQUEST WAS NOT A LEGAL DOCUMENT. HE HAD RETAINED COPIES OF THE PETITIONS SUBMITTED FOR THE ADVISORY VOTE AND HAD ALSO RECEIVED A RECEIPT FROM THE CLERK WHEN FILING WITH THE TOWNSHIP. HE RECALLED EVENTS DURING THE LATE 1970'S WHEN HE WAS TOWNSHIP SUPERVISOR.

JUDGE DONER FELT THIS RECALL HAD BEEN INITIATED AS A RESULT OF A CONFLICT BETWEEN THE APPEAL PROCEDURE AND THE ELECTION PROCEDURE. THAT RECALL LAW WAS NOT ESTABLISHED FOR THE PURPOSE OF ENCOURAGING ACTION A TOWNSHIP BOARD MIGHT OR MIGHT NOT HAVE TAKEN. A RECALL PROCESS WAS NOT TO BE EXERCISED AGAINST OFFICIALS WHO WERE PERFORMING THEIR DUTIES. IN THIS CASE, NO PROOF OF MALFEASANCE NOR MISFEASANCE HAD BEEN EVIDENCED TO WARRANT THE RECALL. NOT TAKING THE ACTION OF MR. KZEWSKI'S WISHES WAS NOT SUFFICIENT BASIS FOR RECALL.

GEORGE MULLISON FURTHER STATED THE TOWNSHIP BOARD SHOULD NOT BE RECALLED FOR PERFORMING THEIR STATUTORY DUTIES.

MOTION #1: CHAIRMAN DONER MOVED RECALL PETITION LABELED #1 BE DENIED ON THE BASIS IT DID NOT MEET THE STATUTORY REQUIREMENTS FOR CLARITY. CLERK ALBERTSON SUPPORTED AND THE MOTION PASSED BY A UNANIMOUS ROLL CALL VOTE.

MOTION #2: CHAIRMAN DONER MOVED RECALL PETITION LABELED #2 BE DENIED ON THE BASIS IT DID NOT MEET THE STATUTORY REQUIREMENTS FOR CLARITY. GEORGE MULLISON SUPPORTED THE MOTION THEN CARRIED BY A ROLL CALL VOTE, 3 YEAS, 0 NAYS.

MOTION #3: CHAIRMAN DONER MOVED RECALL PETITION LABELED #3 BE DENIED ON THE BASIS IT DID NOT MEET THE STATUTORY REQUIREMENTS FOR CLARITY. CLERK ALBERTSON SUPPORTED THE MOTION, THUS PASSED BY UNANIMOUS ROLL CALL VOTE.

MOTION #4: CHAIRMAN DONER MOVED RECALL PETITION LABELED #4 BE DENIED ON THE BASIS IT DID NOT MEET THE STATUTORY REQUIREMENTS FOR CLARITY. PROSECUTOR MULLISON SUPPORTED THE MOTION AND IT WAS THEN ADOPTED BY UNANIMOUS ROLL CALL VOTE.

IT WAS THE CONSENSUS OF THE COMMISSION, NONE OF THE FOUR PETITIONS SUBMITTED MET THE CLARITY PROVISIONS ESTABLISHED BY STATE STATUTE AND THEREFORE WERE NOT TO BE CIRCULATED.

CHMN. DONER STATED THERE WAS MORE TO CLARITY OF A PETITION THAN UNDERSTANDING EVERY WORD SUBMITTED. CASE LAW SUPPORTED THE STATUTORY REQUIREMENTS REFERRED TO. ON THIS PARTICULAR ISSUE, CHMN. DONER QUESTIONED WHETHER OR NOT ANY WORDING SUBMITTED WOULD MEET THE STANDARDS OF THE STATUTE AS INTREPRETED BY OUR COURTS. FURTHER, THAT REMEDY MAY COME FROM OTHER MEANS.